

### **REMARKS**

Reconsideration is requested.

Claims 1, 2 and 4 have been canceled, without prejudice. Upon entry of the present Amendment, claims 3, 5 and 6 will be pending. The claims have been amended, without prejudice, to advance prosecution. Entry of the present Amendment is requested.

The applicants believe the Section 102 rejection of claims 3-6 over Yamabe (JP 09315986 A) is obviated by the above amendments. Withdrawal of the rejection is requested in view of the above and the following distinguishing comments.

The applicants submit that the invention is drawn to a functional cosmetic having different use in comparison with the cited art.

The applicants believe that, generally, in judging whether an invention is drawn to a functional cosmetic, its use should be judged in accordance with whether the claims state the use as cosmetics. In the applicants' view, functional cosmetics are known to be cosmetics showing biochemical or physical efficacy/effects on skin. In the applicants' experience, cosmetics having the following objectives are believed to be required of functional cosmetics:

1. product improving skin whitening,
2. product improving skin wrinkles,
3. product protecting skin from ultra violet lights or tanning skin beautifully

Based on the above, the applicants submit the following considerations regarding the claimed invention and the cited art.

The above-amended claim 1 defines a use of a *Mallotous japonicus* extract for improving skin wrinkles wherein the *Mallotous japonicus* extract as an active ingredient comprises 1.1 to 10 wt% based on the total weight, which the applicants submit will be appreciated as relating to a product improving skin wrinkles.

The applicants submit however that the cited art stated as anti-inflammatory agent comprising a solvent extract of *Mallotous japonicus*, shows that a solvent extract can be used as an anti-inflammatory agent providing anti-inflammatory activity for skin which controls edema formed on skin.

The applicants submit that the uses of the claimed invention and the cited art are distinctly different.

The applicants submit that the claimed invention and the cited art involve uses with different biochemical mechanism effects on skin.

In relation with the Examiner's suggestion that the phrase for improving skin wrinkles in claim 3, for example, is a preamble which recites intended future use of the claimed composition and no patentable weight is given to this phrase, the applicants submit that the claimed invention is described as a use invention wherein natural extract is used for specific use and it is applicable for functional cosmetics in view of standard that in judging whether an invention is drawn to a functional cosmetic, its use should be considered and judged in accordance with whether the claims state a use as cosmetics. The applicants believe the functional cosmetics mean cosmetics showing biochemical or physical efficacy/effects on skin.

The applicants submit that reviewing the biochemical efficacy/effects when applied to skin, the claimed invention obtained an excellent improvements on skin

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wrinkles, and the applicants request that the Examiner see Example 3 in this regard, through reactions for inhibiting an activity of elastase (the applicants request the Examiner to see Example 1 in this regard) and for significant enhancing effect on collagen biosynthesis (the applicants request the Examiner to see Example 2 in this regard).

The applicants believe that examples of the cited reference confirm that it accomplished anti-inflammatory effect inhibiting skin edema through experiments with male-rats of Wistar origin.

The applicants believe that the evidence of record establishes that the biochemical mechanism or physical efficacy/effects of the claimed invention and the cited art are distinct and that claims are patentable over the cited art.

Entry of the present amendment and withdrawal of the Section 102 rejection are requested.

The claims are submitted to be condition for allowance and a Notice to that effect is requested.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:                     /B. J. Sadoff/                      
                    B. J. Sadoff  
                    Reg. No. 36,663

BJS:pp  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100